



To: Honorable Ed Gomes, Senate Co-Chair Labor & Public Employees Committee and Honorable Peter Tercyack, House Chairman Labor & Public Employees Committee
From: Rocio Alejandra Avila, Staff Attorney & State Policy Director, National Domestic Workers Alliance (NDWA)

Re: Testimony in Opposition of House Bill 5260 (“HB 5260”) – AAC Domestic Service and Overtime Pay

Date: February 25,, 2016

NDWA organizes domestic workers in the United States for respect, recognition and improved labor standards. Through leadership development, strategic campaigns, legislative change and alliance building we are building a powerful movement for social, racial and global justice. We are member-ship based organization that represents 53 affiliate organizations in 26 cities and 18 states- all of which are working to redress the inequities faced by domestic workers.

Domestic workers comprise a growing workforce that has been historically excluded from basic workplace protections, such as minimum wage, overtime, anti-discrimination protections, health and safety and the right to organize. NDWA has led the movement both at the federal level and in several states to pass Domestic Worker Bill of Rights (DWBOR’s) to eliminate the exclusions¹. These exclusions can be traced back not to rational public policy motivations, but rather to politically motivated carve-outs done on a federal level in order to appease racist legislators which were then mirrored in state labor protections.²

¹ Several states have recently expanded protections for domestic workers through DWBOR’s: 1) NY (2010); 2) Hawaii (2013); 3) California (2013); 4) Massachusetts (2014), 5) Oregon (2015) and Connecticut (2015).

² “There has always been a difference in the wage scale of white and colored labor....You cannot put the Negro and the white man on the same basis and get away with it.” Statement of Representative J. Mark Wilcox in 1937, opposing the proposed Fair Labor Standards Act if FLSA equalized wages of white and black workers, as reported in *The Echoes of Slavery: Recognizing the Racist Origins of the Agricultural and Domestic Worker Exclusion from the National Labor Relations Act*, Juan F. Perea, 72 OH ST. L.J. 95, 115 (2010); “The president was quick to reassure, when asked if Fair Labor Standards Act (FLSA) would “force” Southern housewives to “pay your negro [sic] girl eleven dollars a week.” He replied that no wage and hour bill would “apply to domestic help.”” Eileen Boris & Premilla Nadasen, *Domestic Workers Organize!*, 1089-7011 WorkingUSA: The Journal of Labor and Society 413, 420 (Dec. 2008)

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Domestic workers provide in-home services such as childcare, home care to seniors and persons with disabilities, and housekeeping. The unique nature of domestic work subjects domestic workers to extreme exploitation and abuse.

In 2015, NDWA supported Connecticut's SB 446, which successfully extended anti-discrimination and harassment protections to domestic workers. We also applauded the success of the Task Force on Domestic Workers and its recommendations, which for the most part, provided a model for lifting industry standards for domestic workers in Connecticut.

However, the purpose of this testimony is on addressing the *harmful* policy implications of **HB 5260 – AAC Domestic Service and Overtime Pay** (hereinafter HB 5260)- on the lives of Connecticut's domestic workers.

I. HB 5260 will allow Third-party Agencies' to increase their profits against the backs of both consumers in need of 24 hours or more home-care and low-wage workers.

Lowers home-care workers wages:

Proposal seeks to amend the definition of "Hours Worked"³ in the Connecticut Statutes to allow domestic work employers to count some work hours as unpaid time. Specifically, the recommendation would allow a third-party employer such as a for-profit home care agency to *not* pay domestic workers for part of a 24-hour shift if the employer signs an agreement with the worker excluding from pay meal periods and off-duty time. This recommendation would allow employers to further reduce the number of hours for which they must pay their domestic workers, potentially lowering workers' pay significantly.

To do so, the third-party agencies seek to adopt a more stringent "sleep time and time not working" standard that will result in less worker protections. The proposal denies workers protection under the general "off duty"⁴, waiting time⁵ and on duty⁶ Fair Labor standards Act (FLSA), which provides broader definitions that extend greater worker protection.

Cost of Home-care are passed on to consumers while third-party agencies profit and workers are barely paid minimum wage:

The third-party agencies contend that the purpose of the proposed bill is in response to the impact of the new federal companionship rules have had on consumer costs for live-in and 24 hour or more home-care as a result of providing minimum wage and overtime to home-care workers who were previously exempted. While on its face their argument seems reasonable, our research found that, in fact, some third-

³ At Connecticut General Statutes Sec. 31-76b(2).

⁴ At 29 CFR 785.16- Off Duty

⁵ At 29 CFR 785.14- Waiting Time

⁶ AT 29 CFR 785.16- On Duty

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party agencies charge high rates for home-care services, but instead of paying its employees prevailing wages, they absorb a margin of the profit, and end up paying workers minimum wage.

The following are a few third-party agencies in Connecticut that agreed to disclose the rates they charge to consumers and the wages they pay the home-care workers (Note: some of the rates on website may be out dated):

1. Griswold Home Care⁷

Live-in worker

Fee: \$219/day (24hr period)

Worker paid: \$145/day (24hr period)

2. Fairfield Family Care⁸

Live-in worker

Fee: \$252/day (24hr period)

Would not disclose worker wages

3. Executive Care⁹

Live-in worker

Fee: \$240/day

Worker paid: \$150/day

For live-in or 24 hours or more home-care, the fees charged to consumers range from \$219 to \$252 per 24-hour period. While it was difficult to get information about workers' wages, but the two sources who were willing to provide this information reported live-in workers are paid \$145 and \$150 per 24-hour period.

Based on the above information, it is clear that when the flat rate is divided by the 24 hours or more services provided by a worker, that they may only be paid minimum wage and no overtime pay. Meanwhile, the family or consumer may be charged for both minimum wage and overtime, but those fees are likely absorbed by the agency.

While this information is not a representation of all third-party agencies, it does highlight, at minimum, that third-party agencies, as a result, of their new legal obligations to pay overtime and minimum wage, are trying to find alternative ways to cut "hours worked" in order to secure their profitability. It is disingenuous and manipulative for the proponents of this proposal to contend that the proposal's purported intent is namely to amend the Connecticut Minimum Wage Statute to comport with the FLSA.

⁷ Go to:

<http://www.homecare-ct.com/> or call: (203) 776-2273

⁸ Go to: <http://www.fairfieldfamilycare.com/> or call: (203) 295-3477

⁹ Go to: <http://www.executivehomecare.com/> or call: (203) 690-1963

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That is false. The proposal misinterprets the federal regulation it is using as its authority for justifying its changes. It applies a set of rules that apply to a distinct sector of home care workers (residential facility workers), who are employed for not less than twenty-four consecutive hours, and who do not reside in their workplace.

This is a manipulative proposal. It simply seeks to benefit third-party employers by allowing them to deduct “hours worked” from 24 hours or more domestic workers, so that they can justify increasing costs for care in light of DOL new regulations, but in reality those fees are not going to workers. And in doing so, the workers are still working the same amount of hours with same amount of duties, but if this bill is approved, they will be subjected to worse working conditions. Essentially, this bill would support wage theft because the agencies would have the power to dictate which hours are “hours worked” and which are not, even though many of these workers are not free to leave the work premises and are required to care for the patient around the clock. Connecticut should not adopt a bill that erodes workers’ rights as HB 5260 does.

II. HB 5260 will push DW’s further into poverty making them even more vulnerable to abuse and exploitation.

Connecticut domestic workers comprise a growing workforce

5.3% of the nation’s domestic workers reside in Connecticut.¹⁰ According to an analysis by the Economic Policy Institute, Connecticut has over 3,500 housecleaners, over 2,500 nannies and over 11,000 homecare providers.¹¹ However, since those numbers are based on Census data, the actual number of domestic workers employed in Connecticut is likely much higher.¹² Of the homecare providers, over 9,000 work through an agency.¹³ Connecticut domestic workers are 94% female, and racially diverse: 58% white, 20% Latina, 17% African American, and 2% Asian.¹⁴

This is a growing industry - Connecticut is projected to have a 39% increase in the need for home health aides alone by 2022.¹⁵ However, although this industry is growing, it is growing with poverty wages. Domestic workers struggle to make ends meet. In the New England area, 42% of homecare workers must rely on some form of public assistance to survive.¹⁶

¹⁰ Tables generated for EPI Briefing Paper, “Low Wages and Scant Benefits Leave Many In-Home Workers Unable to Make Ends Meet”, Heidi Shierholz, Economic Policy Institute (November 25, 2013)

¹¹ Tables generated for EPI Briefing Paper, “Low Wages and Scant Benefits Leave Many In-Home Workers Unable to Make Ends Meet”, Heidi Shierholz, Economic Policy Institute (November 25, 2013)

¹² Many government and other data surveys fail to count many workers paid off-the-books and thus may undercount workers in many low-wage industries.

¹³ Id.

¹⁴ Economic Policy Institute analysis of Current Population Survey Outgoing Rotation Group microdata, *available at* <http://www.epi.org/files/2013/in-home-workers-state-tables.pdf>

¹⁵ PHI State Data Center, *available at* <http://phinational.org/policy/states/connecticut/>

¹⁶ Id.

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The inadequacies of the current structure of direct care services cannot be solved on the backs of home care workers - it is neither just nor sustainable.

While home care is a growing workforce, the industry is still one of the lowest paid. The implications are, as the data above-referenced shows, that the home care industry is perpetuating income inequality for women of color and immigrants. According to our research, in Connecticut the median hourly wage for personal care aides was \$11.89 per hour and for home health aides it was \$13.14 per hour.¹⁷ Many of these women are recipients of means-tested public assistance despite being full-time home care workers.¹⁸

The impact of HB 5260 in the home care industry is clear- it will drive home care workers into earning below poverty-line wages. It will do so by giving third-party employers an exemption that will allow them to cut hours worked for workers who are, in fact, working all hours on duty and who are already earning low wages. Workers will be forced to work long hours and not paid for all hours worked. This will translate into less money in their pockets, and as a result, an increase in poverty working conditions for home care workers.

Connecticut domestic workers face harassment, discrimination and severe labor exploitation

Furthermore, interviews with domestic workers reveal that they often endure verbal, psychological, and physical abuse on the job without recourse. Domestic workers, who are largely unprotected by contracts and laws available to other workers, fear employer retaliation. Ninety-one percent of workers who encountered problems with their working conditions in the prior twelve months did not complain because they were afraid they would lose their job.¹⁹

There is no current prevalence estimate of overall forced labor in the United States, however small studies of individual organizations have revealed that when it comes to trafficking for labor, domestic work is often the leading sector. In last year's groundbreaking Urban Institute study of labor trafficking in the

United States, domestic workers made up the largest proportion (37%) of the 122 cases they reviewed.²⁰

According to the anti-trafficking group Polaris, "as of August 2014, the National Human Trafficking Resource Center (NHTRC) [operators of the nation's leading anti-trafficking national hotline] received reports of 851 potential cases of labor trafficking involving domestic work, making it the most frequently reported type of labor trafficking and representing more than a quarter of all labor trafficking cases reported to the NHTRC."²¹ In a 2013 report spotlighting 150 cases of human trafficking, New York City legal services organization City Bar Justice Center showed that of their labor trafficking clients, 79.3%

¹⁷ See- PHI State Data Center, available at <http://phinational.org/policy/states/connecticut/>

¹⁸ Id.

¹⁹ Id.

²⁰ Owens, Colleen, and Meredith Dank, et al. 2014. *Understanding the Organization, Operation, and Victimization Process of Labor Trafficking in the United States*. New York: Urban Institute and Northeastern University.

²¹ Agatha Schmaedick Tan, "Domestic Workers and the National Human Trafficking Resource Center", in *Beyond Survival: Organizing to End Human Trafficking of Domestic Workers* (January 2015), Beyond Survival, National Domestic Workers Alliance

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were domestic workers.²²

Connecticut service providers and domestic workers have both identified the exclusion of domestic workers from employment protections as a contributing factor leading to severe labor exploitation.

Alicia Kinsman, managing attorney for the International Institute of Connecticut, wrote that in 2013, her anti-trafficking services program Project Rescue served eleven survivors of domestic servitude – Connecticut domestic workers forced to stay in their workplace and work due to the employer’s use of force, fraud or coercion.²³ She also observed that “[d]omestic workers often live in the home of the employer, isolated from the public and outside of the purview of federal labor laws.” Ms. Kinsman further wrote that “if the home remains a place where labor laws do not apply, domestic workers will continue to be exploited, with little legal protection.

Live-in workers are especially vulnerable to exploitation and abuse. 67 percent of live-in workers are paid below the state minimum wage, and the median hourly wage of these workers is \$6.15.²⁴ Twenty-five percent of live-in workers had responsibilities that prevented them from getting at least five hours of uninterrupted sleep at night during the week prior to being interviewed.²⁵ Live-in workers are also often most likely to experience harassment, severe labor exploitation and trafficking – and their current unprotected status leaves them highly vulnerable.²⁶ These live-in workers are almost always the sole employees in their workplaces.

We believe that HB 5260 will subject live-in domestic workers to further abuse because workers will likely earn less wages and will have less opportunities to leave abusive working conditions.

III. HB 5260 threatens the health and safety of Ct’s families in need of home-care services along with the DW’s who provide the services.

While there is a need for 24 hours or more home care, that is high quality and professional, there should also be strong protections against threatening the health and safety of the workers who do this work. We believe that HB 5260 implicitly sends a message to workers and consumers alike that home care is not valued and deserving of quality wages and working conditions. As noted above, the effect of HB 5260 in the home care sector will be that workers will work more hours to make up for the “hours worked” that

²² Tomatore, Suzanne and Laura Matthews-Jolly. December 2013. *Spotlight on 150 Human Trafficking Cases*. New York: City Bar Justice Center. Available at: <http://www2.nycbar.org/citybarjusticecenter/images/stories/pdfs/cbjc-iwc-human-trafficking.pdf> [Accessed 10 January 2015].

²³ Letter submitted to the Connecticut Domestic Workers Rights Task Force, Alicia Kinsman, International Institute of Connecticut, November 19, 2014.

²⁴ Id.

²⁵ Id.

²⁶ Beyond Survival: Organizing to End the Trafficking of Domestic Workers, available at <http://www.domesticworkers.org/beyondsurvival>

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are deducted by the agency employer. This will, in turn, perpetuate harmful working conditions patterns, where domestic workers will not rest because they will fear earning less money.

If they are tired or distressed, then the quality of their services will be reduced and it will affect the families they care for. To avoid these inequities, home care workers should be encouraged to take breaks, breaks where they are actually free from work obligations and free to leave the premises. Absent those types of breaks, they should be compensated for all hours worked.

IV. Protecting Domestic Workers and Providing Quality Home-Care is Feasible

Given the special vulnerability of this workforce and its growing importance to the stability of Connecticut families and seniors, we urge this committee to consider other options to address the inadequacies of the current structure of home care services. HB 5260 is not the answer. As noted, it seeks to do so on the backs of home care workers, and doing so, will only erode workers' rights.

Instead, this Labor Committee should vet the fact that the cost implications related to overtime and minimum wages can be solved by third party agencies restructuring their business plans. They should already be encouraging consumers to have multiple home care workers that are sent to their homes in shifts to avoid overtime. This is the most concrete solution to the problem of overtime pay and one that can be easily implemented, but that many third party agencies choose not to do because it requires them to change their daily flat rates, which is how they make most of their profit.

For the above reasons, we ask for you to vote against HB 5260- a bill that erodes workers' rights and will push 24 hour or more domestic workers into poverty wages.

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